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Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-459

THE GOODYEAR TIRE & RUBBER COMPANY
Petitioner,

vs.

LOCAL UNION No. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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TABLE OF CONTENTS

Question presented 1

Statement of the case 2

Reasons for denying the writ 5

Conclusion 8

TABLE OF AUTHORITIES

Cases

Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) 4, 7

United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960) 5, 6

Constitution and Statutes

Ohio Revised Code, Sec. 2711.10(D) 3

United States Constitution, Fourteenth Amendment, Section 1 5

42 U.S.C. Sec. 2000e-2 ..... 2, 4, 5, 7

29 C.F.R. Part 1604, Sec. 1604.10(b) 2, 3

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Respondent, Local Union No. 200, United Rubber, Cork, Linoleum and Plastic Workers of America, prays that a Writ of Certiorari not issue to review the judgment of the Supreme Court of Ohio entered in the above-entitled case on June 25, 1975.

QUESTION PRESENTED

Whether Ohio has deprived Petitioner of its property without due process of law and has denied Petitioner equal protection of the laws by upholding an arbitrator's decision to modify the terms of a collective bargaining agreement as necessitated by statute or regulation where the parties to the agreement voluntarily delegated such specific authority to the arbitrator.

STATEMENT OF THE CASE

Local Union No. 200, United Rubber, Cork, Linoleum and Plastic Workers of America (hereinafter "Union") filed a grievance pursuant to its collective bargaining agreements with Goodyear Tire and Rubber Company (hereinafter "Company") protesting the Company's refusal to pay accident and sickness benefits to female employees who were on pregnancy leave and were declared by a doctor to have been disabled for more than six (6) weeks. On February 7, 1973, Arbitrator Edwin R. Teple sustained the Union's grievance.

In rendering his award in favor of the Union, the arbitrator found that he could not sustain the continued effectuation of the pregnancy disability payments without obfuscating the clear meaning of Guideline 1604.10(b) promulgated by the Equal Employment Opportunity Commission. The arbitrator supported his determination with the following language:

> "Article II(b) (of the collective bargaining agreement) clearly provides that where a conflict is found, any valid Federal law shall supersede the conflicting provisions of the Basic Agreement. In the Umpire's opinion, it is not necessary to take the matter to court, or to wait until the United States Supreme Court determines the issue in order to activate this provision. The Guideline in question is an interpretation of Title VII of the Civil Rights Act, and may properly be presumed to be valid until declared otherwise by the Federal Courts. A conflict with the provisions of the agreement might be found by the EEOC pursuant to a complaint filed with that Agency. It also might be found by an Umpire, if the circumstances were clear enough in a particular case before him."

Furthermore, the Arbitrator found:

> "The Guidelines have become part of the Code of Federal Regulations, and in the Umpire's judgment the provision in question (1604.10) constitutes a federal regulation within the meaning of the . . . agreement."

The Company instituted an action in the Court of Common Pleas of Auglaize County, seeking a judgment under Ohio Revised Code Sec. 2711.10 (D) vacating the arbitration award on the ground that the arbitrator exceeded his powers. Upon submission by both the Company and the Union of Motions for Summary Judgment, the Court of Common Pleas entered a judgment on December 11, 1973, denying the Company's Motion for Summary Judgment and granting the Union's Motion for Summary Judgment.

The Company appealed to the Court of Appeals of Ohio, Third Appellate District. On April 17, 1974 the Court of Appeals rendered its opinion which affirmed the decision of the Court of Common Pleas insofar as it refused to set aside the Arbitrator's award.

The Supreme Court of Ohio took jurisdiction of this matter upon the Company's appeal and, on June 25, 1975, affirmed the judgment of the Court of Appeals. The Ohio Court limited its decision to the specific issue before it. The Court reviewed the collective bargaining agreements between the Company and Union and found a specific provision granting authority to an arbitrator to modify the agreements:

> "In the instant case, the Pension Agreement does specifically provide for modification as necessitated by statute or regulation. No abuse of authority appears from the

arbitrator's decision that he could consider the modification clause to be subject to his jurisdiction and interpretation."

Since the collective bargaining agreements granted such specific authority to the arbitrator, the Court was not deciding a broad issue of law. The Court's reasoning reveals that it specifically rejected any theory that, absent the contractual grant of modification authority, an arbitrator could dispense his own interpretation of Title VII of the Civil Rights Act. However, because of the specific delegation in the instant case, the Court found that the grievance-arbitration process was a proper alternative forum to the statutory remedies provided in Title VII and that such a determination was mandated by this Court in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974).

REASONS FOR DENYING THE WRIT

I

The petition of the Company is an attempt to relitigate a principle established long ago by this Court in *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960). Petitioner seeks to avoid the applicability of this case by claiming violations of its rights under the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. These issues were not raised before the Supreme Court of Ohio and, therefore, are inappropriate for review by this Court.

Petitioner did argue before the Ohio Supreme Court that an arbitrator has no general authority to invoke statutory provisions as if such provisions were written into the agreements between the parties. Respondent did not, in the past, and does not now, contend that an arbitrator is imbued with any such general authority. However, such a broad question was not decided by the Ohio Supreme Court because the Court recognized that the parties' agreement contained a specific modification clause in Part V, Section C-8 of the Pension Insurance and Service Award Agreement. This clause provides: "The provisions of this section C may be appropriately modified where necessitated by federal or state statute or regulation." The Ohio Supreme Court viewed the arbitrator's authority as being drawn from this section. In fact, Petitioner never contended that the arbitrator lacked such authority. The Ohio Supreme Court recognized this failure and stated that: "No claim is raised that the arbitrator's determination that he had jurisdiction to alter the agreement as necessitated by statute or regulation exceeded his authority." 42 Ohio St. 2d 516, 519 (1975) Thus, it is clear that Ohio did not delegate any general authority to the arbitrator, it merely upheld an unchallenged provision of a contract.

Petitioner is, therefore, arguing that it was denied due process of law by a court decision upholding a provision of a valid contract into which it freely entered and failed to challenge in the lower courts. The illogic of this position is that Petitioner, unhappy with the result of an arbitration award, is now attempting to obtain a review of the merits of it. Respondent respectfully submits that such a position is contrary to the long standing rule established in *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

II

Petitioner also argues that this is a case of great public importance due to the possibility that upholding the decision of the Ohio Supreme Court could result in a "civil rights law of the shop." This approach ignores the narrow scope of the Court's decision. The Ohio Court upheld the arbitrator's decision because of the presence of a modification clause in the agreement. Should a civil rights law of the shop arise and prove undesirable, the parties need only remove the modification clause from the contract and insert in its place a provision expressly negating such authority.

In short, a civil rights law of the shop can, at present, arise only where the parties voluntarily grant the arbitrator power to modify the agreement. The policy question then is, "Does the Fourteenth Amendment preclude parties from providing a parallel remedy for discrimination where the parties have bargained for it and where the parallel remedy does not affect the aggrieved party's right to a trial de novo in federal court?" In *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) this Court has already ruled upon this question. This Court described the propriety of alternative forums as follows:

> "(T)he arbitrator has authority to resolve only questions of contractual rights, and this authority remains regardless of whether certain contractual rights are similar to, or duplicative of, the substantive rights secured by Title VII." *Supra*, at 53-54.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should not be granted.

Respectfully submitted,

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